

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MARY KAREN ERBE,)	
Executrix of the Estate of Edward Erbe,)	
)	
Plaintiff,)	Civil Action No. 06-113
)	
v.)	Judge Terrence F. McVerry
)	Magistrate Judge Lisa Pupo Lenihan
BRIAN BILLETER, CIGNA GROUP)	
INSURANCE, and CONNECTICUT)	
GENERAL LIFE INSURANCE CO.,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff's complaint was received by the Clerk of Court on January 27, 2006 by way of Notice of Removal from the Court of Common Pleas of Westmoreland County, Pennsylvania, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on October 16, 2006, recommended that the Motion to Dismiss for Failure to State a Claim under Fed.R.Civ.P. 12(b)(6) (Doc. No. 6) filed by Defendants be granted and the case be dismissed without prejudice as to Defendants Connecticut General Life Insurance Company and Brian Billeter; that Plaintiff be granted leave to file an amended complaint to assert a claim or claims under Section 502(a) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1132(a), and/or federal common law claims under ERISA, as to Defendants Connecticut General and Brian Billeter, within twenty (20) days from the date of the Memorandum Order adopting this Report and Recommendation; that

Defendants' Motion to Dismiss be granted and the case dismissed with prejudice as to Defendant CIGNA Group Insurance; and that Defendants' motion to strike Plaintiff's jury demand and to dismiss Plaintiff's request for punitive and/or extracontractual damages (Doc. No. 6) be granted. Service was made on counsel of record for all parties. No objections to the report and recommendation were filed.

After review of the pleadings and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 3rd day of November, 2006,

IT IS HEREBY ORDERED that the Motion to Dismiss for Failure to State a Claim under Fed.R.Civ.P. 12(b)(6) (Doc. No. 6) filed by Defendants is **GRANTED** and the case is **DISMISSED WITHOUT PREJUDICE** as to Defendants Connecticut General Life Insurance Company and Brian Billeter.

IT IS FURTHER ORDERED that Plaintiff's request for leave to file an amended complaint is **GRANTED** as to Defendants Connecticut General Life Insurance Company and Brian Billeter. Plaintiff is hereby directed to file an amended complaint asserting a claim or claims under Section 502(a) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1132(a), and/or federal common law claims under ERISA, within twenty (20) days from the date of this Order.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (Doc. No. 6) is **GRANTED** and the case is **DISMISSED WITH PREJUDICE** as to Defendant CIGNA Group Insurance.

IT IS FURTHER ORDERED that Defendants' Motion to Strike Plaintiff's jury

demand and to dismiss Plaintiff's request for punitive and/or extracontractual damages (Doc. No. 6) is **GRANTED**.

The report and recommendation of Magistrate Judge Lenihan, dated October 16, 2006, is adopted as the opinion of the Court.

By the Court:

s/ Terrence F. McVerry
United States District Judge

cc: Hon. Lisa Pupo Lenihan
United States Magistrate Judge

All Counsel of Record
Via Electronic Mail